

105TH CONGRESS
2D SESSION

S. 2277

To protect employees of air carriers who serve as whistleblowers under applicable Federal law, or who refuse to violate an applicable law, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 8, 1998

Mr. GRASSLEY introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To protect employees of air carriers who serve as whistleblowers under applicable Federal law, or who refuse to violate an applicable law, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. WHISTLEBLOWER PROTECTION.**

4 (a) DEFINITIONS.—In this section:

5 (1) AIR CARRIER.—The term “air carrier” has
6 the meaning given that term in section 40102 of
7 title 49, United States Code.

8 (2) COVERED PROCEEDING.—The term “cov-
9 ered proceeding” means a proceeding conducted by

1 the Secretary of Transportation or the Adminis-
2 trator of the Federal Aviation Administration to
3 carry out a function of the Department of Transpor-
4 tation.

5 (3) EMPLOYEE.—The term “employee”
6 means—

7 (A) an applicant that applies for employ-
8 ment by an air carrier, employee, or former em-
9 ployee of an air carrier; and

10 (B) includes a contractor or subcontractor
11 of the Federal Aviation Administration carrying
12 out a function of the Department of Transpor-
13 tation or of a contractor or subcontractor of an
14 air carrier.

15 (4) RELATED ACTION.—The term “related ac-
16 tion” means the actions of an employee to—

17 (A) notify an employer or the Secretary of
18 Transportation of an alleged violation of title
19 49, United States Code;

20 (B) refuse to engage in any practice that
21 the employee reasonably believes constitutes a
22 violation of law (including a rule or regulation);

23 (C) testified before Congress or at any
24 Federal or State proceeding regarding any pro-
25 vision of title 49, United States Code;

1 (D) commences, acts with the intention of
2 commencing, or causes to be commenced a pro-
3 ceeding under title 49, United States Code;

4 (E) testified or is about to testify in any
5 such proceeding; or

6 (F) assisted or participated or is about to
7 participate in any manner in such a proceeding
8 or in any other manner in such a proceeding or
9 in any other action to carry out the purposes of
10 title 49, United States Code.

11 (b) WHISTLEBLOWER PROTECTION.—

12 (1) LIMITATION ON LIABILITY.—No employee
13 shall be liable by reason of an activity described in
14 subparagraph (A), (B), or (C) of paragraph (2).

15 (2) EMPLOYEES DESCRIBED.—An employee de-
16 scribed in this paragraph is an employee who, in a
17 manner consistent with applicable law—

18 (A) commences, acts with the intention of
19 commencing, or causes to be commenced a cov-
20 ered proceeding;

21 (B) testifies or acts with the intention of
22 testifying at a covered proceeding or with re-
23 spect to a related action;

1 (C) assists with or participates in or acts
2 with the intention of assisting or participating
3 in a covered proceeding; or

4 (D) carries out a related action.

5 (3) REFUSAL TO VIOLATE LAW.—No employee
6 shall be liable for refusing to violate or assist in the
7 violation of any law (including any rule or regula-
8 tion) in the course of employment, if the refusal is
9 based on a reasonable belief that the law would be
10 violated.

11 (4) PROHIBITION ON DISCRIMINATION.—No air
12 carrier, contractor, or subcontractor covered under
13 this section may discriminate against an employee
14 described in paragraph (2).

15 (c) PROCEDURES AND PENALTIES.—

16 (1) FILING OF COMPLAINTS AND PROCE-
17 DURES.—

18 (A) IN GENERAL.—An employee alleging
19 discrimination (including discharge, discipline,
20 or reassignment) in violation of subsection (b)
21 or another person at the employee's request,
22 may file a complaint with the Secretary of
23 Labor not later than 180 days after the alleged
24 violation occurs.

25 (B) PROCEDURES.—

1 (i) IN GENERAL.—The Secretary of
2 Labor may issue a subpoena for the at-
3 tendance and testimony of any person and
4 the production of documentary or other
5 evidence from any person if the testimony
6 or production requested is not unduly bur-
7 densome and appears reasonably calculated
8 to lead to the discovery of admissible evi-
9 dence.

10 (ii) PROCEDURES.—Subject to para-
11 graph (4), in carrying out this subsection,
12 the Secretary of Labor shall, with respect
13 to a complaint described in subparagraph
14 (A), use the same procedures for filing
15 complaints, conducting investigations,
16 holding hearings, and issuing orders as are
17 applicable to drivers of commercial motor
18 vehicles under section 31105(b) of title 49,
19 United States Code.

20 (C) BURDEN OF PROOF.—

21 (i) IN GENERAL.—The Secretary of
22 Labor shall dismiss a complaint filed under
23 subparagraph (A), and shall not conduct
24 the investigation or provide relief after
25 completion of the procedures required

1 under subparagraph (B), unless the com-
2 plainant has made a prima facie showing
3 that any behavior described in subsection
4 (b) (2) or (3) was a contributing factor in
5 the discrimination (including discharge or
6 discipline) alleged in the complaint.

7 (ii) DEMONSTRATION BY EM-
8 PLOYER.—Notwithstanding a finding by
9 the Secretary that the complainant has
10 made a showing required under clause (i),
11 no investigation required or relief available
12 under subparagraph (B) shall be carried
13 out or made available if the employer dem-
14 onstrates, by clear and convincing evi-
15 dence, that it would have taken the same
16 unfavorable personnel action for legitimate,
17 independent reasons in the absence of such
18 behavior.

19 (D) PENALTIES.—The penalties contained
20 in section 31105(b) of title 49, United States
21 Code, shall apply to persons who violate sub-
22 section (b) of this section in the same manner
23 as those penalties apply to persons who violate
24 section 31105(a) of title 49, United States
25 Code.

1 (2) JUDICIAL REVIEW AND VENUE.—A person
2 adversely affected by an order issued pursuant to
3 paragraph (1)(B) may seek judicial review in the
4 same manner as is prescribed in section 31105(c) of
5 title 49, United States Code. The court in issuing
6 any final order under this paragraph may award
7 costs of litigation (including reasonable attorney and
8 expert witness fees) to any party whenever the court
9 determines such award is appropriate.

10 (3) CIVIL ACTIONS.—If a person fails to comply
11 with an order issued pursuant to paragraph (1), the
12 Secretary of Labor shall bring a civil action to en-
13 force the order in the district court of the United
14 States for the judicial district in which the violation
15 occurred.

16 (4) ALTERNATIVE PROCEDURES.—Upon filing a
17 complaint under this subsection, with the mutual
18 consent of the parties, the Secretary of Labor may
19 provide for mediation or arbitration in a manner
20 consistent with applicable law, in lieu of conducting
21 a hearing and issuing an order under the procedures
22 contained in section 31105(b) of title 49, United
23 States Code.

1 **SEC. 2. WHISTLEBLOWER PROTECTION FOR FAA EMPLOY-**
 2 **EES.**

3 Section 347(b)(1) of the Department of Transpor-
 4 tation and Related Agencies Appropriations Act, 1996 (49
 5 U.S.C. 106 note; 109 Stat. 460) is amended by inserting
 6 before the semicolon at the end the following: “, including
 7 the provisions for investigation, adjudication, and enforce-
 8 ment as provided for in chapters 12 and 77 of title 5,
 9 United States Code”.

10 **SEC. 3. PROTECTION AGAINST OVERBROAD RESTRICTIONS**
 11 **ON DISCLOSURES.**

12 (a) PROHIBITION.—

13 (1) IN GENERAL.—No employer may spend
 14 funds to implement or enforce the agreements in
 15 Standard Forms 312 and 4355 of the Federal Gov-
 16 ernment or any other nondisclosure policy, form, or
 17 agreement if such policy, form, or agreement does
 18 not contain the following statement: “These provi-
 19 sions are consistent with and do not supersede, con-
 20 flict with, or otherwise alter the employee obliga-
 21 tions, rights, or liabilities created by Executive
 22 Order No. 12958; section 7211 of title 5, United
 23 States Code (governing disclosures to Congress);
 24 section 1034 of title 10, United States Code, (gov-
 25 erning disclosures to Congress by members of the
 26 military); section 2302(b)(8) of title 5, United

1 States Code (governing disclosures of illegality,
2 waste, fraud, abuse, or public health or safety
3 threats); the Intelligence Identities Protection Act of
4 1982 (50 U.S.C. 421 et seq.) (governing disclosures
5 that could expose confidential Government agents);
6 and the statutes which protect against disclosures
7 which may compromise the national security, includ-
8 ing sections 641, 793, 794, 798, and 952 of title 18,
9 United States Code, and section 4(b) of the Subver-
10 sive Activities Act of 1950 (50 U.S.C. 783(b)). The
11 definitions, requirements, obligations, rights, sanc-
12 tions, and liabilities created by such Executive order
13 and such provisions are incorporated into this Agree-
14 ment and are controlling.”.

15 (2) INTELLIGENCE ACTIVITIES.—Notwithstand-
16 ing the paragraph (1), a nondisclosure policy, form,
17 or agreement that is to be executed by a person con-
18 nected with the conduct of an intelligence or intel-
19 ligence-related activity, other than an employee or
20 officer of the United States Government, may con-
21 tain provisions appropriate to the particular activity
22 for which such document is to be used. Such form
23 or agreement shall, at a minimum, require that the
24 person will not disclose classified information re-
25 ceived in the course of such activity unless specifi-

1 cally authorized to do so by the United States Gov-
2 ernment.

3 (3) VIOLATIONS OF LAW.—Nondisclosure agree-
4 ments or forms described in paragraph (1) shall
5 clarify that such agreements do not bar disclosures
6 to Congress or to an authorized official of an execu-
7 tive agency or the Department of Justice that are
8 essential to reporting a substantial violation of law.

9 (b) CIVIL ACTIONS.—An employee, former employee,
10 or applicant for employment to which this section applies
11 may, with respect to an action for a violation of section
12 7211 or 7212 of title 49, United States Code, that is
13 taken, threatened, or proposed to be taken against such
14 employee, former employee, or applicant for employment,
15 bring a civil action for a jury trial in the appropriate dis-
16 trict court of the United States for relief.

17 (c) PROCEDURES.—In any action brought under sub-
18 section (b)—

19 (1) the matter shall be reviewed de novo by the
20 court; and

21 (2) the proceeding shall be governed by the
22 legal burdens of proof in sections 1214(b)(4)(B) and
23 1221(e) of title 5, United States Code.

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